

IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

WRIT PETITION NO :12266 of 2005

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Dated: 26th December 2005

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Between:

1. The Union of India rep. by its Secretary to Government, Ministry of Finance and others

..... PETITIONERS

AND

G.Satya Prakash Rao

.....RESPONDENT

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

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W.P.NO.12266 OF 2005

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ORAL ORDER:

(Per the Hon'ble Sri Justice J.Chelameswar)

The respondents in O.A.No.400 of 2004 on the file of the Central Administrative Tribunal, Hyderabad Bench (for short 'the Tribunal'), are the petitioners herein. The sole respondent herein was the applicant in the abovementioned O.A., which was allowed by an order dated 01-10-2004. Challenging the correctness of the said order, the present writ petition is filed.

The respondent was working as an Inspector of Customs and Central Excise. He was served with a charge-memo dated 28-07-1999. The substance of the charge-memo is that he acquired certain assets like, a ZEN Maruti Car, without intimating the said fact to the competent authority. It appears that a criminal case under the Prevention of Corruption Act, is also registered against the respondent on various heads including the charge of possession of disproportionate assets including the abovementioned Maruti Car apart from other items.

In the background of the abovementioned facts, the respondent approached the Tribunal, praying that the departmental enquiry be stayed pending criminal trial into the charges referred to above. The Tribunal by the impugned order, was pleased to allow the O.A., in substance following a judgment of the Supreme Court in STATE OF RAJASTHAN v. B.K.MEENA & OTHERS, which stood referred by a decision of the Supreme Court in HINDUSTAN PETROLEUM CORPORATION LTD & OTHERS v. SARVESH BERRY.

It is also a case, where simultaneously, the departmental proceedings as well as the criminal case of disproportionate assets were launched against the respondent before the Supreme Court. The departmental proceedings were initiated on the ground of not filing the correct property returns in accordance with the relevant service rules, applicable to the respondent therein. The Supreme Court came to the conclusion that the pendency of the

criminal case, in the circumstances, was not a ground for staying the departmental proceedings.

In the present case also, the scope of the departmental enquiry is limited to the issue whether there was a dereliction on the part of the respondent to give appropriate intimation of the acquisition of an asset as required under the service rules relevant to the respondent. Assuming for the sake of argument that the respondent has enough resources other than his salary or income arising out of his employment, the failure to give an intimation itself is a misconduct. The existence of a legal sources of income does not absolve him of the misconduct of which he is charged. Whereas in the criminal case, the scope of enquiry is confined to the existence of the legal resources for acquisition of such assets, if the petitioners do not establish the existence of such resources, a presumption would be drawn that such assets were acquired through ill-gotten wealth. The scope of both the proceedings is totally different and we see no reason to stay the departmental proceedings in the background of the abovementioned facts and the reasons given.

The writ petition, is therefore, allowed setting aside the impugned order. No costs.

J.Chelameswar, J

P.Lakshmana Reddy, J

26th December 2005

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